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MINUTES
FRIDAY – DECEMBER 13, 2002

Call to Order

The Board of Environmental Review's teleconference meeting was called to order by Chairman Russell at 2:02 p.m., on Friday, December 13, 2002, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present (via telephone): Chairman Joseph Russell, Ward Shanahan, Dr. Garon Smith, David Fishbaugh, Kim Lacey, and Russ Hudson

Board Members Absent: Susan Kirby Brooke

Board Attorneys Present: Tom Bowe, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Carol Hendrickson, Hendrickson's Court Reporting

Department Personnel Present: Jan Sensibaugh, Director; Tom Livers, Deputy Director; Lisa Peterson, Public Affairs Coordinator, Director's Office (DIR); John North, Chief Legal Counsel, Legal Unit (Legal), DIR; Claudia Massman, Legal, DIR; Elois Johnson, Legal, DIR; Bonnie Lovelace, Chief, Water Protection Bureau (WPB), Permitting and Compliance Division (PCD); Art Compton, Administrator, Planning, Prevention and Assistance Division (PPAD); Abe Horpestad, Resource Protection Bureau (RPB), PPAD; Christian Levine, RPB, PPAD

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Alan Joscelyn, Fidelity Exploration and Production Company; Don Allen, Western Environmental Trade Association (WETA); Mike Murphy, MWRA; Julie DalSoglio, US EPA; Brenda Lindlief Hall, Tongue River Water Users Association; Roger Muggli (via telephone); Other Anonymous Interested Persons (via telephone)

I. ACTION AGENDA ITEMS

A. Initiation of Supplemental Rulemaking

1. In the matter of numeric water quality standards

Chairman Joe Russell introduced the agenda item and asked if someone from the DEQ would like to speak.

Mr. Art Compton addressed the Board on behalf of the DEQ. He explained that the DEQ had a proposal to initiate on a supplemental rule package addressed at the December 6 meeting. Mr. Compton stated there were several elements to the proposed rulemaking. He described the first element as being the numeric water quality standards, which had been under discussion for the last several meetings, and stated that the numbers before them this day were the DEQ's recommendation.

Mr. Compton acknowledged that the non-degradation approach was not included in this proposed rulemaking; that it was included in the rule being processed now, which the Board had previously initiated. He further stated it was the DEQ's recommendation that if the Board adopts numeric standards, the non-degradation thresholds remain at the narrative-standard level.

Mr. Tom Bowe, Board Attorney, confirmed that the Petitioners' proposal was still in existence, but that the amended notice being considered by the Board this day, was one of the DEQ proposals, published at the same time as the Petitioners'.

Chairman Russell inquired as to whether the Board had acted on the Petitioners' proposal at the December 6 meeting. After a brief discussion on the issue, Chairman Russell concluded it was not pertinent to the issue at hand.

Mr. Compton clarified that while the non-deg proposal was not in this supplemental notice, it was still whole and in rulemaking.

Mr. Compton said the second element of the proposed rulemaking was referred to as the flow-based protocol. He provided particulars of what the flow-based protocol entailed. Mr. Compton then stated that the final element of the proposed rulemaking consisted of a requirement that a person proposing to discharge CBM water must apply for a non-deg determination from DEQ.

Mr. Compton pointed out a fourth element in Alternative 2, referencing it as the nonseverability provision. He further declared that this one element was the sole distinction between Alternative 1 and Alternative 2.

Mr. Ward Shanahan MOVED to ADOPT Alternative 2. Dr. Garon Smith intervened, reminding that the task at hand was to initiate rulemaking, not adopt. Mr. Bowe confirmed Dr. Smith's statement. Mr. Shanahan WITHDREW his motion.

Chairman Russell began discussion regarding the nonseverability versus severability. Mr. Shanahan interrupted with a MOTION to ADOPT the supplemental rulemaking. Mr. Russ Hudson SECONDED the motion. Chairman Russell called for further discussion.

Mr. Hudson requested that the DEQ put together a package consisting of different scenarios that could happen and the implications of each, explaining that he was just becoming aware of not being familiar with this type of rule. He also felt this request might benefit other Board members who may be in the same boat as he.

Ms. Lacey pointed out an error in Alternative 2. Mr. Livers asked for clarification on the location of the error within the documents and Ms. Lacey supplied the exact location. Mr. Livers confirmed that it was indeed an error and explained that it would be corrected.

Mr. Shanahan inquired as to whether the supplemental rulemaking will be blended into the original rulemaking, requiring the Board to make a decision on only one item. In response, Mr. Bowe explained that a supplemental rulemaking causes an extension of the original 180 days by six months.

Mr. Shanahan further inquired about the differences in the number of paragraphs between Alternative 1 and Alternative 2. Ms. Claudia Massman, on behalf of the DEQ, provided a detailed explanation. She concluded by stating there were differences in formatting between the two rules, but essentially they were the same rule except for nonseverability.

A brief discussion took place and it was clarified that the original motion should have been to INITIATE, not to adopt. Further discussion commenced regarding the public hearing that would take place at the January meeting. It was clarified that comments should address the supplemental notices only, or those being initiated this day.

Hearing no further discussion, Chairman Russell called for a VOTE. The motion CARRIED unanimously.

II. ADJOURNMENT

Chairman Russell called for a motion to ADJOURN. Ms. Lacey so MOVED. Mr. Shanahan SECONDED the motion. A VOTE was taken and the motion CARRIED unanimously. The meeting adjourned at 2:25 p.m.

Board of Environmental Review December 13, 2002, Minutes Approved:

JAN P. SENSIBAUGH
DIRECTOR
DEPARTMENT OF ENVIRONMENTAL
QUALITY

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL
REVIEW

DATE

DATE